

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
January 10, 2013

Meeting called to order at 7:07 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alessi, Ann Grinnell

Members absent: Rich Balano

Staff: Gerry Mylroie, Town Planner

Pledge to the Flag

Minutes: December 13, 2012

**Mr. Melanson moved** to accept the minutes of December 13, 2012 as submitted

**Ms. Tuveson seconded**

**Motion carried unanimously by all members present**

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

**William Brewster, Kittery Point**, suggested that John Paul Jones Park would be a better location for the proposed Thresher Memorial, rather than the traffic circle area.

**Martha Peterson, Haley Road**, asked for a show of hands of those in the audience in opposition to or interested in the Thresher Memorial [show of hands appeared unanimous]. She noted a widow of a Thresher victim stated viewing the memorial daily at the proposed traffic circle would be 'very difficult'. She suggested the memorial should be located in a quiet, contemplative location, and that a dignified ceremony could be held in a green space on April 10, 2013. Further review with interested parties should be pursued to these ends.

**Neil Jorgenson, Haley Road**, does not believe the traffic circle is the place for a memorial. There are four Thresher memorials, with three at the shipyard. He did not want an artificial deadline driving a design that is not well conceived. He suggested placing the flagpole on I-95 near the bridge with an MDOT sign identifying the tragedy. This would be more in scale, and passed by more than 500,000 cars each week. The circle of remembrance could be located within Kittery.

**Susan Emery, Kittery Point**, believes a total plan needs to be in place prior to approval, and whatever plan is presented should be open to the public and asks the Thresher committee take more time to consider the interests of the community. She noted the pole does not have to be installed in the center of the circle and does not have to be 129 feet, according to the ordinance. She suggested a shorter, nautical-style pole of 43 feet (representing 1 foot for 3 lives lost) be placed behind the existing poles in the circle. The trees would be left standing and the Thresher Memorial design created by a Traip student could be included. Though a building permit has been issued, this could be stopped pending a more thoughtful design. She also suggested having the images of those lost engraved in stone. She stated it is time to step back and take more time and receive more input before proceeding.

**Don Robinson, Kittery** noted he has a safety concern with the flag location at the circle, as drivers may be distracted attempting to view the flag at the top of a 129-foot pole.

**Matt Brock, Kittery Point**, stated a complete plan is needed before any ground is broken, and requested the Board reconsider and condition their decision to allow the flag pole in the center of the circle. If the flagpole is installed it will be difficult to have meaningful public comment and

input on the overall memorial design. If, however, the time is taken to redevelop the plan, the proponents of the memorial may find they have a better design.

**Wendy Pomeroy, Kittery Point**, concurred with Mr. Brock's statements.

**Dave Lincoln** asked if the Board can reconsider their decision. **Mr. Emerson** stated he is unsure how this can be done. He asked if the three phases of the memorial are interconnected. **Mr. Melanson** stated the Board determined that one, integrated plan be brought before the Board. **Mr. Lincoln** asked that each component of the memorial be considered separately. **Ms. Driscoll** asked about the building permit. **Mr. Mylroie** noted a permit has been issued that includes installation of the flagpole and the removal of the four trees. Dig Safe has surveyed the property and the pole has been ordered. **Ms. Grinnell** asked for a discussion about how to delay the installation of the flagpole. **Ms. Driscoll** asked about the lighting at the top of the pole. **Mr. Emerson** stated the ordinance allows the installation of the flagpole. **Mr. Melanson** noted this process began in 2011 and asked what the process is to appeal the permit. **Ms. Tuveson** asked who and how would this appeal proceed. Discussion followed regarding the process in which an appeal can be made, whether through legal avenues or through the permit appeal processes with the Code Enforcement office, whether there is a basis for such an appeal, and who has standing. **Mr. Emerson** read from the ordinance that an appeal may be filed by any 'aggrieved party'. There was further discussion about the content of the permit regarding lighting and whether lighting was ever approved by the Board. The permit was not available to reference. **Ms. Tuveson** stated an administrative appeal needs a reason the aggrieved party feels the permit was issued in error, other than just not liking it. **Mr. Jorgenson** suggested a petition to referendum to stop the process. **Mr. Melanson** noted there are two sides to this issue. **Mr. Alessi** suggested a motion to Council to slow down the process. Discussion followed on how to proceed with Council participation.

**Mr. Alessi moved** that in light of strong community opposition to the Thresher Memorial plan, the Planning Board recommends to the Town Council that all activities regarding the flag pole installation be delayed until such time the entire plan can be re-evaluated.

**Ms. Grinnell seconded**

**Mr. Melanson** stated he does not believe the Council will deal with this issue, and that all parties need to work together. Discussion followed as to how to bring the parties together in a workshop. **Mr. Mylroie** stated there has been a meeting between both parties, primarily concentrating on the location of the circle of honor and landscaping in the circle.

**Motion failed** with 0 in favor; 2 opposed; 2 abstentions (Grinnell and Alessi)

Mr. Emerson asked for a motion

**Mr. Melanson moved** the Planning Board schedule a workshop between all parties with regard to the Thresher Memorial flagpole at 6:00 p.m. on January 24, 2013.

**Ms. Grinnell seconded**

**Ms. Grinnell amended** the motion to include the workshop begin at to 5:00 p.m.

**Ms. Driscoll** noted this will not resolve the issue regarding the building permit. **Ms. Tuveson** explained if the appeal is accepted for consideration, there may be a long while until it is heard by the Board of Appeals.

**Motion and amendment carried unanimously**

**Martha Peterson** asked about appealing the decision of the Planning Board. **Mr. Emerson** stated there is a period of time in which a Board's decision can be appealed regarding applications. In this case, there was no application, but an ordinance amendment that was recommended to and approved by the Council.

**Ms. Grinnell** confirmed that beyond installing the flagpole and removing the trees, any other plans for the memorial must be brought before the Planning Board. **Mr. Emerson** concurred.

**ITEM 1 – Town Capital Improvements Plan Program; Kittery Sewer Department Capital Projects.**

Action: Receive department's capital improvement plan and determine with/without conditions if proposal is consistent with the Town's adopted comprehensive plan. George Kathios, Superintendent of Wastewater Services, representing the Kittery Sewer Department.

**Mr. Kathios** thanked the Board for participating in the workshop and for considering their recommendations. **Mr. Emerson** stated a motion is needed in order to direct the Council regarding the proposed improvements. Following discussion, Board members agreed they had no issues with Phase 1 including the Business Park and areas along 236, but that it was premature to try to identify future areas.

**Ms. Grinnell** wishes to have further discussions with the Comp Plan Update Committee, Water District and Open Space Committee prior to a final decision.

**Ms. Grinnell moved** to schedule a workshop with these Committees.

**Mr. Melanson seconded**

**Motion carried unanimously**

**ITEM 2 – Rain Garden/Kittery LID Area at 180 State Road; Kittery Department of Public Works.**

Action: Review After-the-Fact Natural Resources Protection Act Permit (NRPA) and provide comments to Department. Area located between State Road (Memorial Circle) and Rogers Road Ext., Tax Map 22 Lot 1 (and a portion of Lot 2) with in the Business Local Zone. Mary Ann Conroy, Commissioner of Public Works, representing the Department of Public Works.

**Mr. Emerson** explained the Board needs to be made aware of these kinds of projects that are so highly visible, and not after the fact. The ordinance does require development in Kittery, regardless of who is doing the work, be reviewed by the Planning Board. He noted there are wetland identification placards that can be placed in wetland areas, and suggested the DPW and Traip develop a program to mark wetlands for future identification. **Ms. Grinnell** asked why the project proceeded without Planning Board review and requested all DPW projects appear before the Board. **Ms. Conroy** stated this was to help mitigate stormwater runoff from the parking area, and the clearing of the area was done in one day, before she was aware it required Board review. **Ms. Tuveson** asked about the filling in the area, and why so much vegetation was removed. **Ms. Conroy** explained vegetation and small trees were removed and larger trees were saved. **Mr. Emerson** read from Title 16.10.3.1 *All proposed development including site, subdivision, business use and other development must be reviewed for conformance with the procedures, standards and requirements of this Code by the Planning Board except as provided herein, but in all cases by the Town Planner and Code Enforcement Officer and where required the Board of Appeals as provided herein* and Title 16.10.3.3.D. *Work on any improvements (including installation of roads or utilities or land clearing) has begun* requires Planning Board approval. **Ms. Conroy** agreed to abide by the title requirements. Discussion followed regarding the DPW's involvement and use of town funds for the installation of electrical connections to the flagpole in Memorial Circle. **Mr. Emerson** summarized the DPW has been advised that future projects need to be reviewed by the Planning Board, and the rain garden design as permitted by the DEP is proposed to be part of the overall Thresher memorial, but this area and any improvements to Memorial Circle have not been approved by the Planning Board. **Mr. Melanson** stated that the DPW must work and maintain areas of town that would not require Board review, however, providing a list of projects to review prior to start would identify those projects requiring Board review. **Ms. Grinnell** noted the Board has begun amending the ordinance to include: *all proposed developments including site, subdivision, business use and other development including Town initiated projects regardless of funding source* will require Board review and approval.

**Mr. Emerson** agreed that the Board needs to be aware of DPW initiated projects and a list would provide them with the information needed to make informed decisions regarding the level of review needed, if any. **Earldean Wells** noted the DEP recommended removal of some of the fill in the LID area, that no impact fee has been charged, and the project has not followed the proper procedure for Town approval. **Ms. Conroy** stated had she known this was a wetland area she would have applied for wetland mitigation funding. **Ms. Wells** stated the project would have then been reviewed by the Conservation Commission, Board and Council to receive that funding. **Ms. Conroy** stated DPW will not conduct any further work outside of the approved DEP plan in this area, nor any work in Memorial Circle without Board approval. Discussion followed regarding providing a visual buffer behind the strip mall next to the LID area. **Mr. Mylroie** stated the Town has received an \$8,000 grant to plant trees in the Town, additional trees in this area could be funded, and a site plan submitted for Board approval. **Ms. Driscoll** supported planting of trees along the edge of the LID area and removal of any reference to a sidewalk in this area. **Ms. Wells** noted the Board has not reviewed the stormwater plan or had it reviewed by CMA Engineers. **Susan Emery** asked how it was determined that a rain garden was needed in a location that was already a wetland, absorbing runoff. Was the wetland not performing its function? Also, the existing trees provided a buffer. She spoke with the Spruce Creek Association and was told they withdrew their involvement when fill was brought in, changing the elevation. Why did the town alter the design and subsequently lose the grant money for the project? **Ms. Conroy** stated a small group within the Spruce Creek Association (Spruce Creek Mitigation Committee) selected this area as they believed runoff was not handled adequately. The fill was brought in from another project to support the Thresher design following discussions with the Planning Department. The labor will be provided by the DPW to complete the project in the spring and noted funding supported the project through September, 2012.

**Mr. Melanson moved** the LID/Rain Garden, as approved by the DEP, be approved by the Board with the proposed walkway stricken from the plan.

**Ms. Tuveson seconded**

**Ms. Grinnell amended** the motion to include that there be no further plan revisions.

**Ms. Driscoll seconded the amendment**

**Motion and amendment carried unanimously**

## **PUBLIC HEARING/OLD BUSINESS**

### **ITEM 3 – 68 Chauncey Creek Road Replacement Structure, Shoreland Development Review.**

Action: Hold public hearing. Accept minutes from site walk, review plan and grant or deny preliminary/final approval. John Rummler, owner and applicant, requests approval to replace and expand an existing structure at the property located at 68 Chauncey Creek Road, Tax Map 45, Lot 72, Residential – Suburban Zone and Shoreland Overlay Zone. Agent is Kenneth Markley, Easterly Survey Inc.

This agenda item was postponed at the request of the applicant.

## **NEW BUSINESS**

**ITEM 4 – 44 Remicks Lane Land Transfer, Subdivision Plan Review.** Action: Accept or deny application and schedule a public hearing. Donna Dionne, owner and applicant, requests approval to convey exempt land within the required 5-year waiting period to an abutter, thereby creating a third lot

and no longer exempt from subdivision. The property located at 44 Remicks Lane, Tax Map 65, Lot 26, Residential Rural Zone. Agent is Bill Anderson, Anderson-Livingston Engineers, Inc.

**Mr. Mylroie** stated the action is to accept the plan and schedule a public hearing.

**Ken Thumith, abutter**, stated he wishes to retain the wooded area around his property, and the property owner agreed to convey a portion of land to him for that purpose. He does not plan to create another building lot, but just retain a wooded buffer.

**Ms. Tuveson moved to** accept the plan and schedule a Public Hearing

**Ms. Grinnell seconded**

**Motion carried unanimously**

**Mr. Emerson** noted that Item 3 will be before the Board again.

**ITEM 5 – Town Planner Items:** Mr. Mylroie noted drafts of proposed ordinance amendments have been provided for Board review prior to the January 24 meeting, including the LED, overlay zone, and amendments to Rural-Residential density. Board members should prepare any inclusions to the proposed amendments for discussion.

- A. Selected Commercial Recreation definition (pending);
- B. Proposed Overlay Zone (pending);
- C. Kittery Foreside outdoor seating evaluation (pending); and
- D. Other updates

1. **Ms. Wells** noted the Conservation Commission did not receive notice of a BoA meeting held on December 11, 2012. The Findings for Seacoast Builders LLC asked for a miscellaneous variation to demolish existing mobile home and to construct a new single family dwelling unit located 9 Sunset Drive. One of the conditions was that a *10' no-mow zone be maintained along the wetland edge, any invasive species may be removed, and a visual height may be maintained*. She asked why this did not come to the Planning Board as it is in a wetland area. **Mr. Emerson** explained the condition may have been included even if the wetlands were not impacted as part of the review and approval.
2. **Ms. Grinnell** asked about the status of the Yankee Commons mineral extraction permit before the Code Enforcement Officer, and plans for the Dansk Outlet. **Mr. Mylroie** stated the CEO has not made a decision at this point, but has had discussions with the Town attorney. Regarding the Kittery Trading Post site, there have been no proposals submitted to the Planning Department.

**Ms. Tuveson moved to adjourn**

**Mr. Melanson seconded**

**Motion carries unanimously by all members present.**

The Kittery Planning Board meeting of January 10, 2013 adjourned at 9:55 p.m.

Submitted by Jan Fisk, Recorder – January 16, 2013